(2)

DB

Single Bench (Criminal)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR MP

CRIMINAL APPEAL 2210 /2000

(APPEAL UNDER SECTION 374(2) OF CR.P.C)

Appellant
In Jail

: Tikaram S/o Dwarika Yadav
aged about 35 years,
R/o Bhaisawundi, Sub-Teh. &
P.S. Magarlod, Distt.Dhamtari(MP)

Versus

Respondent : State of Madhya Pradesh
through Police Station
Magarlod, Dist.Dhamtari(MP)

Shri B.R.Dubey Advocate 28/8/2000

Re. A.R

CRIMINAL APPEAL UNDER SECTION 374(2) OF CRIMINAL PROCEDURE CODE

Conviction :

Sentence:

(21)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.App.2210 **सन् 2000**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH -:

HON'BLE MR. L.C. BHADOO, Ag. C.J. &
HON'BLE MR. SUNIL KUMAR SINHA, J.

31.01.2007

Shri Vishnu Koshta, counsel for the appellant.

Shri D.K. Gwalre, Dy. Government Advocate for the State.

Heard.

Oral judgment dictated on *Dais*.

As per L.C. Bhadoo, Ag. Chief Justice,

This appeal is directed against the judgment of conviction and order of sentence dated 6.7.2000, passed by the Additional Sessions Judge, Dhamtari, District- Dhamtari in Sessions Trial No.26/2000, whereby, the learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of I.P.C., sentenced him to undergo rigorous imprisonment for life.

The case of prosecution, in brief, is that the accused/ appellant kept Kaushalya Bai as his wife, on account of their physical relations, she gave birth to a child namely-Budharam. In the intervening night of 22nd - 23rd of November, 1999, at about 12.00 O'clock in the midnight, accused/appellant committed murder of Budharam by pressing his neck. Merg intimation (Ex.P/16) was lodged by Kaushalya Bai, mother of the child in the

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Police Station-Magarlod on 23.11.1999, at about 10.00 a.m. to the effect that accused/appellant kept her as his wife and out of their physical relations there was a 4 months child namely- Budharam. On the fateful night, she went along with the child to attend call of nature; accused/appellant came and caught hold of her neck, on which she raised cries, on hearing her cries, Tarachand Sahu came there and separated them, thereafter, she went towards the vicinity, carrying the child in her hands. When she reached near the *Bakri of Maharaj*, accused/appellant-Tikaram came and snatched the child from her hands. He took away the child towards the hut of Kaushalya Bai, from where he picked up the torch and took the child to his house from where he again brought the child to her hut. She was watching everything while sitting near the *Bakri of Maharaj*. In the morning, at about 6.00 a.m., the accused opened the door and went outside to bring tea, in the meantime, she entered the hut and saw that her son was lying dead, there were injuries on his neck and cheek, her son was murdered by Tikaram on the suspicion that he was born on account of her illicit relations with somebody else. On receiving this merg intimation, Station House Officer, Police Station-Magarlod registered First Information Report (Ex.P/14), left for the scene of occurrence. He prepared site plan (Ex.P/12), after giving notice to the *Panchas* (Ex.P/5), prepared inquest on the body of Budharam (Ex.P/6). Body of Budharam was sent for postmortem examination to Government Hospital- Magarlod, where Dr. K.K.Som conducted postmortem and prepared postmortem report

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(Ex.P/4) and opined that cause of death was asphyxia due to strangulation and the death was homicidal in nature.

After completion of the investigation, a charge sheet was filed in the Court of J.M.F.C. Dhamtari, who in turn committed the case to the Sessions Judge, Raipur, from where, the learned Additional Sessions Judge, Dhamtari received the case on transfer for trial.

In order to establish the charge against accused/ appellant, the prosecution examined as many as 11 witnesses. The statement of accused/appellant was recorded under Section 313 of Cr.P.C., in which, he denied the material appearing against him in the prosecution evidence and stated that he is innocent and has been falsely implicated by Kaushalya Bai and she is a lady of bad character.

Learned Additional Sessions Judge after hearing respective counsel for the parties and perusal of the record convicted and sentenced the accused/appellant as aforementioned.

Shri Vishnu Koshta, learned counsel for the accused/appellant has not disputed the homicidal death of Budharam. Moreover, Dr. K.K.Som (PW-6) has stated that on 24.11.1999, he was working as an Assistant Surgeon in the Community Health Centre, Magarlod, on that day, at about 11.00 a.m., he conducted postmortem on the body of Budharam. There was swelling on the frontal area of skull, a multiple contusion on

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आदेश पत्रक (पूर्वानुबद्ध)

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the left side of zygomatic process, abrasion and contusion on left side of the neck. The contusions were in the sizes of 4 x 1 x 1 cm, 2 x 1 x 1 cm, ½ x ½ x ½ cm, ¼ x ¼ x ¼ cm and another was ¼ x ¼ x ¼ cm. There was blood oozing from the corner of inner side of the eye-lid. The cause of death was asphyxia as a result of strangulation. The death was homicidal in nature. The report is Ex.P/4. Therefore, in view of the above medical evidence, it is established that death of Budharam was homicidal in nature.

As far as involvement of the accused/appellant in crime in question is concerned, the conviction is based on evidence of PW-2 – Kaushalya Bai, wife of the accused/appellant and mother of the child as also the evidence of Tarachand Sahu (PW-11). PW- 2 – Kaushalya Bai has stated that on account of physical relations with the accused/appellant, she gave birth to a child, who was named as Budharam. He was aged about 4 months. In the fateful night at about 9.00 p.m., carrying the child in her lap, she went near the house of Tarachand Sahu, as the accused/ appellant was beating her. She called Tarachand Sahu, he came and got her free, on which she ran away, carrying Budharam in her lap. The accused/appellant thereafter, snatched Budharam from her lap and took him to his residence and thereafter, he brought him to the hut of Kaushalya Bai, where accused and the child remained for the whole night. She was sitting outside the hut. In the morning when accused came out of the hut, she entered the hut and saw that there were injuries on the neck and

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cheek of Budharam, he was dead. The accused/appellant had murdered her child; therefore, she went to the Police Station-Magarlod and gave merg intimation (Ex.P/16). In the cross-examination of this witness (Kaushalya Bai), the defence has not been able to brought on record any circumstance, based on which, it can be held that Kaushalya Bai gave false evidence to implicate accused/ appellant in a false case. The fact that accused/ appellant quarrelled with this witness- Kaushalya Bai and the child was taken away by him is established by the evidence of PW-11 – Tarachand Sahu, who has stated that Kaushalya Bai was residing with accused/appellant, but they were not married. In the fateful night, he was standing near his residence, then he saw that Tikaram was quarrelling with Kaushalya Bai, on which he advised them not to quarrel. After ½ an hour, his wife woke up him, he saw that accused/appellant came with the child and after staying for some time with him, he left towards his house, ½ an hour thereafter, he again came with the child, then he advised Tikaram to take the child and call Kaushalya Bai, she will take care of the child, thereafter, he went to sleep. In the morning, he came to know that Budharam had died, therefore, the above evidence of this witness as also the evidence of Kaushalya Bai-PW-2 established the fact that the accused/appellant snatched the child from Kaushalya Bai and brought him to this witness-Tarachand Sahu, thereafter, he took the child to the hut of Kaushalya Bai, which was seen by Kaushalya Bai(PW-2). In the morning, when the accused/appellant came out of the hut,

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Kaushalya Bai entered the hut and saw that Budharam was lying dead and injuries were present on his neck and cheek. Doctor has opined that Budharam died on account of asphyxia, as a result of strangulation and injuries were homicidal in nature. The prosecution has established up to that extent, therefore, the burden lies on the shoulder of accused/appellant to explain as to how Budharam sustained homicidal injuries. In this connection, the Provisions of Section 106 of the Evidence Act are clear that the burden is on the person, who has the knowledge about the circumstances under which, the offence was committed. The accused/appellant has failed to discharge this burden. He has simply denied the prosecution evidence and stated that he has been falsely implicated in this crime. The accused/appellant has not stated that apart from him, there was anybody else also inside the hut or when he snatched the child from the lap of Kaushalya Bai, any other person entered and inflicted injuries on the neck of the child. Therefore, we are of the considered opinion that the prosecution has been able to establish involvement of the accused/appellant in crime in question.

We do not find any illegality or infirmity in the judgment of trial Court. The appeal fails and the same is liable to be dismissed and it is hereby dismissed.

Sd/-
L.C.BHADOO
Judge

Sd/-
Sunil Kumar Sinha
Judge

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